Lansing Police Department Internal Board of Review

RE: Police Shooting of John Ferguson, deceased.

An Internal Board of Review was convened at the direction of Lansing Police Department (LPD) Chief Teresa Szymanski to conduct an administrative review of the use of deadly force against John Ferguson at 1214 South Holmes Street on September 13, 2011. The LPD Internal Board of Review (the Board) was comprised of Captain Michael Yankowski, Lieutenant Daryl Green, Lieutenant Darin Southworth, Sergeant Cherie Ballor, and Captain Raymond Hall who acted as Chairperson. Since a criminal investigation had been conducted by the Michigan State Police (MSP) and submitted to the Ingham County Office of the Prosecuting Attorney<sup>1</sup>, the Board was charged with determining whether administrative procedures and training of the LPD, detailed below, had been followed.

# In reviewing this matter, Board Members examined the following records:

- 1. MSP Report # 010-0000299-11 (DB)
- 2. 911 Communication Center case print-out
- 3. LPD Internal Affairs report and statements
- 4. Photographs of the scene
- 5. LPD Operational Procedure 700-53, Special Tactics and Rescue Team Procedure
- 6. LPD Operational Procedure 300-24, Outside Investigation
- 7. LPD Operational Procedure 600-7, Response to Resistance
- 8. LPD Police RMS/IIQ contact report for John Ferguson
- 9. LPD Operational Procedure 600-39, Police Involved Death or Serious Injury
- 10. Response to Resistance Review by Lieutenant Southworth
- 11. LPD Incident Report LLA110913060772
- 12. Internal Affairs Investigation Report written by Sergeant Thomas Fabus
- 13. Letter from Ingham County Prosecuting Attorney Stuart Dunnings III
- 14. Forensic Autopsy Report of Joseph Carter
- 15. Transcript of initial 911 call
- 16. MSP Laboratory Report
- 17. Interview of Jeannette Ferguson
- 18. Interview of Officer Billy Windom
- 19. Interview of Jeffery Ferguson
- 20. Interview of Jeffery Allison
- 21. Interview of Charles Bullard
- 22. Training information of Officer Billy Windom
- 23. LPD Captain's Highlights reference LLA110913060772

<sup>&</sup>lt;sup>1</sup> The Michigan State Police were asked to investigate this shooting in accordance with Lansing Police Department Operational Procedure 300-24, Outside Investigation. The Michigan State Police report was reviewed as part of this investigation.

## The Internal Board of Review

As stated, the purpose of this administrative review board was to determine if involved LPD employees followed departmental policies, procedures, and rules. Secondarily, the board reviewed training and tactics of the involved employees and determined if the officers' actions were consistent with LPD training standards.

## **Incident Summary**

On September 13, 2011 at approximately 16:10 hours, Officer Billy Windom was dispatched to a domestic related assault located at 1214 South Holmes Street in the City of Lansing. Dispatch advised responding Officers of the accused's description and specifics of the originating call. While Officers were en-route to the scene, Dispatch advised additional information that the accused may be in possession of a hammer and threatening to shoot anyone approaching. The accused, John Ferguson, was reported to be intoxicated and had access to weapons in the house. Dispatch also advised a neighbor was at the residence attempting to talk to the accused.

Officer Windom was the first Officer on scene and parked his patrol vehicle several residences north of 1214 South Holmes Street. Officer Windom approached the residence, while armed with the AR-15. As Windom was approaching, he observed a subject (neighbor) in the side yard and also a subject (John Ferguson) on an elevated deck at 1214 South Holmes Street. Officer Windom observed the subject on the deck raise a rifle with a scope and point it at him. Officer Windom ran to 1208 South Holmes Street to utilize the residence as a position of cover. This residence is the first residence directly north of 1214 South Holmes Street.

Officer Windom gave the subject in the yard (neighbor) verbal commands to get out of the area and also evacuate the resident at 1208 South Holmes Street. Officer Windom updated dispatch on the armed subject and gave several loud verbal commands to the accused to drop the weapon. Officer Windom observed the accused point the weapon at him for a second time. Officer Windom fired one shot from his AR-15, which proved fatal to John Ferguson.

Additional LPD Officers arrived, secured the scene and identified witnesses. The MSP was requested for the investigation of this officer involved shooting.

### The Board Findings Regarding the Law

Even though it is not a primary task of the board to review possible violations of law, the Board did review the Ingham County Prosecutor's conclusion as part of the process of determining if there were any violations of LPD Policies or if any action taken before, during or after the incident which was in violation of the Department's professional standards. On December 2, 2011, Ingham County Prosecutor Stuart Dunnings III issued a written opinion in regards to MSP Incident #010-0000299-11.

### In part, Prosecutor Dunnings stated:

"The issue in this case is whether or not Officer Windom honestly and reasonably believed he was in danger of being killed or injured when he shot Mr. Ferguson. In evaluating whether Officer Windom was acting with an honest and reasonable belief, one must look at the conduct and circumstances that appeared to Officer Windom at the time he shot Mr. Ferguson. Officer Windom was in full uniform, when Mr. Ferguson pointed his rifle at Officer Windom. Officer Windom told Mr. Ferguson to drop the rifle more than one time. Instead of dropping the rifle, Mr. Ferguson aimed the rifle at Officer Windom and Officer Windom shot once. Based on all the information I reviewed, it is my opinion that Officer Billy Windom acted in self-defense and criminal charges will not be authorized in this matter."

#### Board's Recommendation

Based on the Ingham County Prosecutor Stuart Dunnings III written opinion and the Board's review of this investigation, the Use of Deadly Force used by Officer Windom in this incident was within the law and consistent with LPD Policy and Professional Standards.

# The Board Findings Regarding the Use of Force

The Board was tasked with answering the question, was the involved officer use of deadly force in accordance with Department Procedures and training?

The LPD Operation Procedure 600-07, Section VII Use of Deadly Force states in part:

- A. Where reasonable, officers will identify themselves and provide a warning before deadly force is applied.
- B. The use of deadly force applies to the following situations:
  - 1. To protect the officer or another from what is reasonably believed to be an imminent threat of death or serious physical injury.

According to the reports reviewed for this incident which included 911 recordings, Officer Windom gave several loud verbal commands to the accused to drop the weapon. Officer Windom observed the accused point the weapon at him for a second time. Officer Windom fired one shot from his AR-15, which proved to be fatal to John Ferguson. The facts as stated here were supported by witnesses at the scene.

## Board's Recommendation

The priority of this Board is to determine if the shooting of John Ferguson by Officer Windom was done so in accordance with LPD's policy, procedure and training. All sworn Officers of LPD are bound by Operational Procedure 600-07 Response to Resistance, as a guide to the use of the reasonable force to overcome the resistance offered; to affect a lawful arrest and accomplish the lawful performance of duty while protecting the public; to provide for officer safety; and to provide for the treatment of any injury or complaint from the use of force. In making the Board's recommendation, we found it helpful once again to review Mr. Dunning's official statement:

"The issue in this case is whether or not Officer Windom honestly and reasonable believed he was in danger of being killed or injured when he shot Mr. Ferguson."

The Board agrees with Mr. Dunning's statement and concluded that Officer Windom had an equally important duty to protect other people in jeopardy of serious injury or death at the hand of John Ferguson. Based on the totality of the circumstances Officer Windom's actions were performed in exemplary fashion and consistent with LPD policy and related training practices.

Based upon the exemplary fashion that Officer Windom responded to this incident, the Board recommends for the Chief of Police to direct the training section to use this tragic incident, as a training model for LPD personnel as it relates to tactical approach and crisis communications.

# **Summary of Findings**

After a thorough review of all available information, the Board concludes that the shooting of John Ferguson on September 13, 2011 at 1412 South Holmes Street, Lansing, Michigan was lawful and in accordance with Departmental Policies, Training and Procedures. In this case, the officer performed in a tactically sound manner and communicated effectively throughout this incidence.

## **Summary of Recommendations**

The Board recommends that the Chief direct the training section to use this tragic, albeit, an isolated incident, as a training model for LPD personnel as it relates to tactical approach and crisis communication that was demonstrated by Officer Windom. In this case, the officer performed in a tactically sound manner and communicated effectively during this incident.

### Conclusion

The inherent nature of police work is unpredictable and dangerous. Police officers must make decisions based on the facts and information available at the time an incident is taking place. Their judgment in making decisions is influenced by their training and experience.

The Board concludes that the courage and situational awareness demonstrated by Officer Windom serves as an example to LPD and other Law Enforcement Professionals as it related to handling similar high-risk situations. Officer Windom's actions also validates that the training and professional development offered to the LPD employees is effective. As stated above, the officer's actions were within established LPD administrative procedures and consistent with training.